

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1164 be amended to read as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2002]:
- 5 **Chapter 21. Credit Information in Property and Casualty**
- 6 **Insurance**
- 7 **Sec. 1. As used in this chapter, "applicant" means an individual**
- 8 **who applies for a policy of property and casualty insurance.**
- 9 **Sec. 2. As used in this chapter, "claim loss" means a claim paid**
- 10 **under a policy of property and casualty insurance, including a**
- 11 **claim for:**
- 12 **(1) bodily injury;**
- 13 **(2) property damage;**
- 14 **(3) medical payments;**
- 15 **(4) collision coverage;**
- 16 **(5) comprehensive coverage;**
- 17 **(6) car rental coverage; or**
- 18 **(7) towing coverage.**
- 19 **Sec. 3. As used in this chapter, "commissioner" refers to the**
- 20 **commissioner of the department.**
- 21 **Sec. 4. As used in this chapter, "credit information" means**
- 22 **credit related information obtained through a review of a credit**
- 23 **history, credit report, or credit score, or on an application for a**
- 24 **policy of property and casualty insurance.**

1       **Sec. 5. As used in this chapter, "credit score" means a number**  
 2       **or rating derived through a credit scoring methodology.**

3       **Sec. 6. As used in this chapter, "credit scoring methodology"**  
 4       **means the particular algorithm, computer model, or other method**  
 5       **used by an insurer to reduce to a numerical or other rating for use**  
 6       **in the insurance underwriting process certain credit history data**  
 7       **contained in an individual's credit report.**

8       **Sec. 7. As used in this chapter, "department" refers to the**  
 9       **department of insurance created under IC 27-1-1-1.**

10       **Sec. 8. As used in this chapter, "insured" means an individual**  
 11       **who is entitled to coverage under a policy of property and casualty**  
 12       **insurance.**

13       **Sec. 9. As used in this chapter, "insurer" means a person that:**

14               **(1) is described in IC 27-1-2-3(x); and**

15               **(2) issues a policy of property and casualty insurance.**

16       **Sec. 10. As used in this chapter, "property and casualty**  
 17       **insurance" means one (1) or more of the kinds of insurance**  
 18       **described in Class 2 and Class 3 of IC 27-1-5-1.**

19       **Sec. 11. (a) This chapter applies to an individual policy of**  
 20       **property and casualty insurance.**

21       **(b) This chapter does not apply to a commercial line of**  
 22       **insurance.**

23       **Sec. 12. (a) An insurer may not use a credit score until the**  
 24       **insurer files with the commissioner the credit scoring methodology**  
 25       **and changes to the credit scoring methodology that the insurer uses**  
 26       **to develop the credit score.**

27       **(b) The commissioner shall review a credit scoring methodology**  
 28       **and changes to the credit scoring methodology filed under**  
 29       **subsection (a) for compliance with Indiana insurance laws and**  
 30       **rules.**

31       **Sec. 13. (a) An insurer may not, based solely on credit**  
 32       **information, refuse to issue, refuse to renew, or cancel a policy of**  
 33       **property and casualty insurance.**

34       **(b) An insurer does not violate subsection (a) if the insurer**  
 35       **offers to provide continuous and identical coverage to an insured**  
 36       **under a policy of property and casualty insurance underwritten:**

37               **(1) by an affiliate of the insurer; and**

38               **(2) in the same rating class.**

39       **Sec. 14. If the credit score of an insured or applicant is adversely**  
 40       **impacted or cannot be generated because the credit history of the**  
 41       **insured or applicant is insufficient, an insurer shall:**

42               **(1) apply underwriting or rating criteria to the insured or**  
 43               **applicant as if the insured or applicant had a neutral credit**  
 44               **history, as defined in the insurer's underwriting guidelines or**  
 45               **rate making standards unless otherwise actuarially justified;**  
 46               **or**

47               **(2) exclude the use of credit as a factor in the underwriting or**

rating process.

**Sec. 15.** An insurer may not, based on credit information, refuse to issue, refuse to renew, or cancel a property and casualty insurance policy, or transfer an insured to an affiliate or to a different rating class if the insured has:

(1) continuously maintained a policy of property and casualty insurance issued by the insurer;

(2) had no claim loss on the policy specified in subdivision (1); and

(3) had no moving traffic violations;

during the three (3) years immediately preceding the date on which the insurer makes a determination described in this section.

**Sec. 16.** (a) If credit information is used as a basis for a refusal to issue, refusal to renew, cancellation, or rating of a policy of property and casualty insurance, the insurer shall provide notice to the insured or applicant of the insurer's use of credit information as a basis for the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance according to the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(b) An insurer shall include in a notice required under subsection (a) notice that the insured or applicant has the right to, not more than ninety (90) days after the insured or applicant receives the notice required under subsection (a), request in writing from the insurer an explanation of the most significant reasons for the credit score result, including the principal factors involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance.

(c) Not more than twenty-one (21) business days after an insurer receives a request under subsection (b):

(1) the insurer; or

(2) a third party that:

(A) possesses the information necessary to provide an explanation requested under subsection (b); and

(B) is directed by the insurer to provide the requested explanation;

shall provide the requested explanation in writing to the insured or applicant.

(d) If an insurer, in the notice provided under subsection (a), provided the explanation requested under subsection (b), the insurer has met the requirement of subsection (c).

**Sec. 17.** (a) An insurer shall not use credit information as a pretext for discrimination against an insured or applicant that is based on the gender, race, nationality, or religion of the insured or applicant.

(b) A credit scoring methodology may not be used by an insurer if the credit scoring methodology incorporates the gender, race,

nationality, or religion of an insured or applicant.

**Sec. 18. Information provided by an insurer to the commissioner under this chapter is confidential.**

**Sec. 19. An insurance producer licensed under IC 27-1-15.6 is not liable in any action arising from the use of credit information by an insurer if the insurance producer complies with the insurer's procedures that are provided to the insurance producer by the insurer concerning the use of credit information.**

**Sec. 20. A willful violation of this chapter is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4, as determined by the commissioner.**

**Sec. 21. This chapter is not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).**

SECTION 2. IC 27-1-21-16.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 2, 2004]: **Sec. 16.1. (a) This section applies to an insured or applicant to whom notice is provided under section 16 of this chapter.**

**(b) This section supplements the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).**

**(c) In addition to the explanation that an insurer must provide under section 16 of this chapter, an insurer shall, not more than twenty-one (21) business days after the insurer receives a request under section 16 of this chapter, provide in writing to the insured or applicant the requested explanation, and additional information involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance, including:**

**(1) notice that a credit score was a determining factor in the insurer's decision;**

**(2) a thorough explanation of the credit scoring process used by the insurer;**

**(3) a list of all factors contained in the credit history of the insured or applicant that were used to derive a credit score that negatively affected the insurability of the insured or applicant; and**

**(4) an explanation of how the factors listed under subdivision (3) negatively affected the insurability of the insured or applicant.**

SECTION 3. IC 27-4-1-4, AS AMENDED BY P.L.132-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:**

**(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:**

**(A) misrepresenting the terms of any policy issued or to be**

- 1 issued or the benefits or advantages promised thereby or the  
2 dividends or share of the surplus to be received thereon;
- 3 (B) making any false or misleading statement as to the  
4 dividends or share of surplus previously paid on similar  
5 policies;
- 6 (C) making any misleading representation or any  
7 misrepresentation as to the financial condition of any insurer,  
8 or as to the legal reserve system upon which any life insurer  
9 operates;
- 10 (D) using any name or title of any policy or class of policies  
11 misrepresenting the true nature thereof; or
- 12 (E) making any misrepresentation to any policyholder insured  
13 in any company for the purpose of inducing or tending to  
14 induce such policyholder to lapse, forfeit, or surrender his  
15 insurance.
- 16 (2) Making, publishing, disseminating, circulating, or placing  
17 before the public, or causing, directly or indirectly, to be made,  
18 published, disseminated, circulated, or placed before the public,  
19 in a newspaper, magazine, or other publication, or in the form of  
20 a notice, circular, pamphlet, letter, or poster, or over any radio or  
21 television station, or in any other way, an advertisement,  
22 announcement, or statement containing any assertion,  
23 representation, or statement with respect to any person in the  
24 conduct of his insurance business, which is untrue, deceptive, or  
25 misleading.
- 26 (3) Making, publishing, disseminating, or circulating, directly or  
27 indirectly, or aiding, abetting, or encouraging the making,  
28 publishing, disseminating, or circulating of any oral or written  
29 statement or any pamphlet, circular, article, or literature which is  
30 false, or maliciously critical of or derogatory to the financial  
31 condition of an insurer, and which is calculated to injure any  
32 person engaged in the business of insurance.
- 33 (4) Entering into any agreement to commit, or individually or by  
34 a concerted action committing any act of boycott, coercion, or  
35 intimidation resulting or tending to result in unreasonable  
36 restraint of, or a monopoly in, the business of insurance.
- 37 (5) Filing with any supervisory or other public official, or making,  
38 publishing, disseminating, circulating, or delivering to any person,  
39 or placing before the public, or causing directly or indirectly, to  
40 be made, published, disseminated, circulated, delivered to any  
41 person, or placed before the public, any false statement of  
42 financial condition of an insurer with intent to deceive. Making  
43 any false entry in any book, report, or statement of any insurer  
44 with intent to deceive any agent or examiner lawfully appointed  
45 to examine into its condition or into any of its affairs, or any  
46 public official to which such insurer is required by law to report,

1 or which has authority by law to examine into its condition or into  
 2 any of its affairs, or, with like intent, willfully omitting to make a  
 3 true entry of any material fact pertaining to the business of such  
 4 insurer in any book, report, or statement of such insurer.

5 (6) Issuing or delivering or permitting agents, officers, or  
 6 employees to issue or deliver, agency company stock or other  
 7 capital stock, or benefit certificates or shares in any common law  
 8 corporation, or securities or any special or advisory board  
 9 contracts or other contracts of any kind promising returns and  
 10 profits as an inducement to insurance.

11 (7) Making or permitting any of the following:

12 (A) Unfair discrimination between individuals of the same  
 13 class and equal expectation of life in the rates or assessments  
 14 charged for any contract of life insurance or of life annuity or  
 15 in the dividends or other benefits payable thereon, or in any  
 16 other of the terms and conditions of such contract; however, in  
 17 determining the class, consideration may be given to the  
 18 nature of the risk, plan of insurance, the actual or expected  
 19 expense of conducting the business, or any other relevant  
 20 factor.

21 (B) Unfair discrimination between individuals of the same  
 22 class involving essentially the same hazards in the amount of  
 23 premium, policy fees, assessments, or rates charged or made  
 24 for any policy or contract of accident or health insurance or in  
 25 the benefits payable thereunder, or in any of the terms or  
 26 conditions of such contract, or in any other manner whatever;  
 27 however, in determining the class, consideration may be given  
 28 to the nature of the risk, the plan of insurance, the actual or  
 29 expected expense of conducting the business, or any other  
 30 relevant factor.

31 (C) Excessive or inadequate charges for premiums, policy  
 32 fees, assessments, or rates, or making or permitting any unfair  
 33 discrimination between persons of the same class involving  
 34 essentially the same hazards, in the amount of premiums,  
 35 policy fees, assessments, or rates charged or made for:

36 (i) policies or contracts of reinsurance or joint reinsurance,  
 37 or abstract and title insurance;

38 (ii) policies or contracts of insurance against loss or damage  
 39 to aircraft, or against liability arising out of the ownership,  
 40 maintenance, or use of any aircraft, or of vessels or craft,  
 41 their cargoes, marine builders' risks, marine protection and  
 42 indemnity, or other risks commonly insured under marine,  
 43 as distinguished from inland marine, insurance; or

44 (iii) policies or contracts of any other kind or kinds of  
 45 insurance whatsoever.

46 However, nothing contained in clause (C) shall be construed to

1 apply to any of the kinds of insurance referred to in clauses (A)  
2 and (B) nor to reinsurance in relation to such kinds of insurance.  
3 Nothing in clause (A), (B), or (C) shall be construed as making or  
4 permitting any excessive, inadequate, or unfairly discriminatory  
5 charge or rate or any charge or rate determined by the department  
6 or commissioner to meet the requirements of any other insurance  
7 rate regulatory law of this state.

8 (8) Except as otherwise expressly provided by law, knowingly  
9 permitting or offering to make or making any contract or policy  
10 of insurance of any kind or kinds whatsoever, including but not in  
11 limitation, life annuities, or agreement as to such contract or  
12 policy other than as plainly expressed in such contract or policy  
13 issued thereon, or paying or allowing, or giving or offering to pay,  
14 allow, or give, directly or indirectly, as inducement to such  
15 insurance, or annuity, any rebate of premiums payable on the  
16 contract, or any special favor or advantage in the dividends,  
17 savings, or other benefits thereon, or any valuable consideration  
18 or inducement whatever not specified in the contract or policy; or  
19 giving, or selling, or purchasing or offering to give, sell, or  
20 purchase as inducement to such insurance or annuity or in  
21 connection therewith, any stocks, bonds, or other securities of any  
22 insurance company or other corporation, association, limited  
23 liability company, or partnership, or any dividends, savings, or  
24 profits accrued thereon, or anything of value whatsoever not  
25 specified in the contract. Nothing in this subdivision and  
26 subdivision (7) shall be construed as including within the  
27 definition of discrimination or rebates any of the following  
28 practices:

29 (A) Paying bonuses to policyholders or otherwise abating their  
30 premiums in whole or in part out of surplus accumulated from  
31 nonparticipating insurance, so long as any such bonuses or  
32 abatement of premiums are fair and equitable to policyholders  
33 and for the best interests of the company and its policyholders.

34 (B) In the case of life insurance policies issued on the  
35 industrial debit plan, making allowance to policyholders who  
36 have continuously for a specified period made premium  
37 payments directly to an office of the insurer in an amount  
38 which fairly represents the saving in collection expense.

39 (C) Readjustment of the rate of premium for a group insurance  
40 policy based on the loss or expense experience thereunder, at  
41 the end of the first year or of any subsequent year of insurance  
42 thereunder, which may be made retroactive only for such  
43 policy year.

44 (D) Paying by an insurer or agent thereof duly licensed as such  
45 under the laws of this state of money, commission, or  
46 brokerage, or giving or allowing by an insurer or such licensed

1 agent thereof anything of value, for or on account of the  
2 solicitation or negotiation of policies or other contracts of any  
3 kind or kinds, to a broker, agent, or solicitor duly licensed  
4 under the laws of this state, but such broker, agent, or solicitor  
5 receiving such consideration shall not pay, give, or allow  
6 credit for such consideration as received in whole or in part,  
7 directly or indirectly, to the insured by way of rebate.

8 (9) Requiring, as a condition precedent to loaning money upon the  
9 security of a mortgage upon real property, that the owner of the  
10 property to whom the money is to be loaned negotiate any policy  
11 of insurance covering such real property through a particular  
12 insurance agent or broker or brokers. However, this subdivision  
13 shall not prevent the exercise by any lender of its or his right to  
14 approve or disapprove of the insurance company selected by the  
15 borrower to underwrite the insurance.

16 (10) Entering into any contract, combination in the form of a trust  
17 or otherwise, or conspiracy in restraint of commerce in the  
18 business of insurance.

19 (11) Monopolizing or attempting to monopolize or combining or  
20 conspiring with any other person or persons to monopolize any  
21 part of commerce in the business of insurance. However,  
22 participation as a member, director, or officer in the activities of  
23 any nonprofit organization of agents or other workers in the  
24 insurance business shall not be interpreted, in itself, to constitute  
25 a combination in restraint of trade or as combining to create a  
26 monopoly as provided in this subdivision and subdivision (10).  
27 The enumeration in this chapter of specific unfair methods of  
28 competition and unfair or deceptive acts and practices in the  
29 business of insurance is not exclusive or restrictive or intended to  
30 limit the powers of the commissioner or department or of any  
31 court of review under section 8 of this chapter.

32 (12) Requiring as a condition precedent to the sale of real or  
33 personal property under any contract of sale, conditional sales  
34 contract, or other similar instrument or upon the security of a  
35 chattel mortgage, that the buyer of such property negotiate any  
36 policy of insurance covering such property through a particular  
37 insurance company, agent, or broker or brokers. However, this  
38 subdivision shall not prevent the exercise by any seller of such  
39 property or the one making a loan thereon, of his, her, or its right  
40 to approve or disapprove of the insurance company selected by  
41 the buyer to underwrite the insurance.

42 (13) Issuing, offering, or participating in a plan to issue or offer,  
43 any policy or certificate of insurance of any kind or character as  
44 an inducement to the purchase of any property, real, personal, or  
45 mixed, or services of any kind, where a charge to the insured is  
46 not made for and on account of such policy or certificate of

insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation

1 of coverage as described in subdivision (17).

2 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor  
3 vehicle insurance rates.

4 (20) Violating IC 27-8-21-2 concerning advertisements referring  
5 to interest rate guarantees.

6 (21) Violating IC 27-8-24.3 concerning insurance and health plan  
7 coverage for victims of abuse.

8 (22) Violating IC 27-8-26 concerning genetic screening or testing.

9 (23) Violating IC 27-1-15.6-3(b) concerning licensure of  
10 insurance producers.

11 **(24) Violating IC 27-2-21 concerning use of credit information**  
12 **in underwriting of property and casualty insurance.**

13 SECTION 4. IC 34-30-2-111.7 IS ADDED TO THE INDIANA  
14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 2002]: IC 27-2-21-19 (**Concerning the liability**  
16 **of insurance producers in actions arising from the use of credit**  
17 **information by an insurer).**

(Reference is to HB 1164 as printed January 24, 2002.)

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Representative Crooks